

One Hundred Seventeenth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday,
the third day of January, two thousand and twenty two*

An Act

To limit the judicial enforceability of predispute nondisclosure and nondisparagement contract clauses relating to disputes involving sexual assault and sexual harassment.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Speak Out Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Sexual harassment and assault remain pervasive in the workplace and throughout civic society, affecting millions of Americans.

(2) Eighty-one percent of women and 43 percent of men have experienced some form of sexual harassment or assault throughout their lifetime.

(3) One in 3 women has faced sexual harassment in the workplace during her career, and an estimated 87 to 94 percent of those who experience sexual harassment never file a formal complaint.

(4) Sexual harassment in the workplace forces many women to leave their occupation or industry, or pass up opportunities for advancement.

(5) In order to combat sexual harassment and assault, it is essential that victims and survivors have the freedom to report and publicly disclose their abuse.

(6) Nondisclosure and nondisparagement provisions in agreements between employers and current, former, and prospective employees, and independent contractors, and between providers of goods and services and consumers, can perpetuate illegal conduct by silencing those who are survivors of illegal sexual harassment and assault or illegal retaliation, or have knowledge of such conduct, while shielding perpetrators and enabling them to continue their abuse.

(7) Prohibiting nondisclosure and nondisparagement clauses will empower survivors to come forward, hold perpetrators accountable for abuse, improve transparency around illegal conduct, enable the pursuit of justice, and make workplaces safer and more productive for everyone.

SEC. 3. DEFINITIONS.

In this Act:

(1) **NONDISCLOSURE CLAUSE.**—The term “nondisclosure clause” means a provision in a contract or agreement that

requires the parties to the contract or agreement not to disclose or discuss conduct, the existence of a settlement involving conduct, or information covered by the terms and conditions of the contract or agreement.

(2) NONDISPARAGEMENT CLAUSE.—The term “nondisparagement clause” means a provision in a contract or agreement that requires 1 or more parties to the contract or agreement not to make a negative statement about another party that relates to the contract, agreement, claim, or case.

(3) SEXUAL ASSAULT DISPUTE.—The term “sexual assault dispute” means a dispute involving a nonconsensual sexual act or sexual contact, as such terms are defined in section 2246 of title 18, United States Code, or similar applicable Tribal or State law, including when the victim lacks capacity to consent.

(4) SEXUAL HARASSMENT DISPUTE.—The term “sexual harassment dispute” means a dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law.

SEC. 4. LIMITATION ON JUDICIAL ENFORCEABILITY OF NONDISCLOSURE AND NONDISPARAGEMENT CONTRACT CLAUSES RELATING TO SEXUAL ASSAULT DISPUTES AND SEXUAL HARASSMENT DISPUTES.

(a) IN GENERAL.—With respect to a sexual assault dispute or sexual harassment dispute, no nondisclosure clause or nondisparagement clause agreed to before the dispute arises shall be judicially enforceable in instances in which conduct is alleged to have violated Federal, Tribal, or State law.

(b) CONTINUED APPLICABILITY OF STATE LAW.—Nothing in this Act shall prohibit a State or locality from enforcing a provision of State law governing nondisclosure or nondisparagement clauses that is at least as protective of the right of an individual to speak freely, as provided by this Act.

(c) CONTINUED APPLICABILITY OF FEDERAL, STATE, AND TRIBAL LAW.—This Act shall not be construed to supersede a provision of Federal, State, or Tribal Law that governs the use of pseudonyms in the filing of claims involving sexual assault or sexual harassment disputes.

(d) PROTECTION OF TRADE SECRETS AND PROPRIETARY INFORMATION.—Nothing in this Act shall prohibit an employer and an employee from protecting trade secrets or proprietary information.

SEC. 5. APPLICABILITY.

This Act shall apply with respect to a claim that is filed under Federal, State, or Tribal law on or after the date of enactment of this Act.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*